

## Considerations for Reducing Work Hours Statewide

Across the nation, local and state governments are exploring the idea of reducing employee work hours temporarily to respond to the current economic challenges. A temporary layoff (or furlough as it is referred to in the civil service rules) would result in an employee being released from work for the duration of the temporary layoff, while a temporary reduction in hours would result in employees working fewer hours and being compensated accordingly. The following explores the issues related to the implementation of such an idea.

### AUTHORITY

**Non-Represented Classified Employees – Temporary Reduction in Hours:** Under the civil service rules governing non-represented classified employees, a temporary reduction in hours is considered a temporary layoff per the provisions of WAC 357-46-063. The rules do not limit the duration of any temporary reduction in hours, provided the employee's hours are not reduced to less than 20 hours in a week. An agency must provide the employee seven calendar days' notice of temporary layoff. The temporary layoff notice must inform the employee of his/her status during temporary layoff and the expected duration of the temporary layoff.

There is no definition in rule of what makes a reduction in hours "temporary" versus permanent. That means an employee could appeal to the Personnel Resources Board if they believe the reduction of hours was not "temporary" in nature. To provide clarity and mitigate the issue, either the civil service rules could be amended to define a temporary layoff or legislation could be enacted that would provide the basis and provisions for temporary reductions in hours.

**Non-Represented Classified Employees – Furlough:** Under the civil service rules "furlough" is defined as the temporary cessation of an employee's service. A furlough is also considered a temporary layoff per the provisions of WAC 357-46-063. An agency may not furlough an employee for more than 30 calendar days in a calendar year. A reduction of one-day per month could be considered a furlough, but would require a temporary layoff be implemented each month.

**Represented Classified Employees – Temporary Layoff:** All eight of the collective bargaining agreements allow for temporary layoffs in the case of an unanticipated loss of funding or revenue shortfall. The length of a temporary layoff is limited to between 30 and 90 calendar days depending on the agreement. Notification to the Union is required prior to initiating a temporary layoff and the Union may demand to bargain the impacts.

**Represented Classified Employees – Temporary Reduction-in-Work Hours:** Five of the eight collective bargaining agreements allow for temporary reduction of work hours to no less than 20 hours per week in the case of an unanticipated loss of funding and/or revenue shortfall.<sup>1</sup> In three of these agreements, the duration of a temporary reduction of work hours is limited to between 30 and 120 calendar days depending on the agreement. The WFSE and SEIU 1199 agreements do not have any

---

<sup>1</sup> The Coalition and the Washington Association of Fish and Wildlife Professionals (WAFWP) collective bargaining agreements do not allow for reduction of work hours in the case of revenue shortfall. It is possible that these unions would challenge the state's attempt to reduce work hours based on an anticipated loss of funding.

language limiting the duration of a reduction in work hours, other than stating that the reduction is temporary. Notification to the Union is required prior to initiating a temporary reduction-in-work hours and the Union may demand to bargain the impacts. For those agreements that do not allow for temporary reduction of work hours the decision to implement a temporary reduction would have to be bargained with the Unions.

**Exempt employees:** Employees who are exempt from civil service under RCW 41.06.070 are at-will employees and, as such, appointing authorities can change the terms and conditions of an exempt employee's appointment, including reducing the scheduled work hours or percentage of appointment. However, since these employees are generally overtime exempt, there are ramifications under the Fair Labor Standards Act when exempt employees' hours are temporarily reduced (see discussion below).

## **EMPLOYEE BENEFIT IMPLICATIONS**

**Health Care Benefits:** Benefit eligibility would not be impacted for employees if temporary reduction in hours was implemented. Public Employees Benefits Board has a rule (WAC 182-12-121) that addresses layoff because of a reduction-in-force. As long as the employee is in pay status for at least eight hours or more for the month, they continue to be eligible for the employer contribution toward benefits.

**Retirement Benefits:** In general, any reduction in hours would impact the retirement compensation used if that compensation fell into the period of time used for the benefit calculations. A member's retirement compensation would likely be lower than expected if he/she is in his/her final years of service with the state and his/her highest earnings are in these final years. Retirement compensation may be further impacted for Plan 1 members of TRS and WSPRS who plan to cash out unused annual leave at retirement. The amount of annual leave cash outs that can be used in the calculation of their benefit may be less than expected.

With the passage of SB 6157 the retirement compensation forgone by members of PERS Plans 1, 2, and 3 during the 2009-2011 biennium will not be affected by reduced work hours, voluntary leave without pay, or temporary furloughs provided members work enough hours to earn a full service credit in the month in which the furlough occurred. The reduced compensation must be an integral part of the employer's expenditure reduction efforts, as certified by the employer. If the reduction in hours impacts the amount of service credit a member earns (see bullets below) then the retirement compensation will be impacted unless the member purchases the service credit as provided by statute.

More specific impacts vary depending upon the retirement plan.

- Reducing a full-time employee by five hours or eight hours a week would not impact plan eligibility and retirement service credit for members of the Public Employees' Retirement System (PERS), Teacher Retirement System (TRS), and Washington State Patrol Retirement System (WSPRS). However, it would impact members of the Law Enforcement Officers' and Fire Fighters' Retirement System (LEOFF) and the Public Safety Employees' Retirement System (PSERS). Employees who would normally be eligible for membership in LEOFF and PSERS retirement systems would not meet the full-time requirement for membership in each system. To mitigate this, the positions must remain regularly scheduled for at least 160 hours per month and the reduced hours must be defined by the employer as leave without pay.
- Reducing hours to the point where a member works less than 90 hours per month would impact most members' retirement benefits not just those in their final years of employment. 90 hours per month is required for Plan 2 and 3 members to receive a full service credit for the month.
- Reducing hours to less than 70 hours per month has a potentially greater impact, as it will reduce the number of service credit months that Plan 1 members earn and reduce further those that Plan 2 and 3 members earn. Membership eligibility also could be significantly impacted by reducing hours to less than 70 hours per month.

## **Seniority, Leave Accruals, and Holiday Pay:**

**Non-Represented Classified Employees:** A temporary reduction in hours can be implemented by reducing an employee's appointment or by requiring each employee to take leave without pay each week/month.

If leave without pay is used to reduce the employee's hours, the following applies to full-time, non-represented classified employees:

- Seniority would not be adjusted, even if the leave without pay exceeded 15 consecutive calendar days.
- Leave accruals would not be impacted, as long as the employee was in pay status for 80 hours in the month.
- Full holiday pay for the scheduled work shift would be paid, as long as the employee is in pay status for 80 hours in the month or for the full work shift preceding the holiday.

If an employee's appointment was changed to part-time, the employee's seniority would be calculated based on actual hours worked and/or in paid status and the employee's leave accrual and holiday pay would be essentially pro-rated.

**Represented Classified Employees:** The agreements vary on the impact to an employee's holiday pay and leave accrual when his/her work hours are temporarily reduced or the employee is temporarily laid off. For those agreements where an employee would be considered part-time when his/her hours are reduced the leave accrual and holiday pay would be pro-rated.

## **LEGAL IMPLICATIONS**

**Fair Labor Standards Act:** A reduction in scheduled hours must translate into a reduction in actual hours worked – even for overtime exempt staff. The federal Fair Labor Standards Act (FLSA) regulations specifically discuss pay deductions for overtime exempt employees that are driven by a “budget required furlough.”<sup>2</sup> When hours are reduced for budget reasons, FLSA exempt employees retain their exemption except in the workweek in which the furlough occurs and for which their pay is reduced. If done for budget reasons, any temporary reduction in hours scenario would likely qualify as a “budget required furlough” under FLSA. Thus, for any week in which FLSA exempt employees work fewer hours and therefore have their pay reduced, they would be considered overtime eligible and entitled to straight time for all hours worked up to 40 and overtime after that, for that week only.

**Statutes and Administrative Rules:** Agency authorizing statutes or statutes which mandate response times or procedural timeframes, such as Public Records Act, Open Public Meetings Act, or Administrative Procedures Act, must be considered. For example, RCW 42.04.060 which requires that state offices are open for business Monday through Friday from 8 a.m. to 5 p.m. (excluding the office of the Lieutenant Governor and Attorney General) would need to be considered given that some reduction strategies may impinge an agency's ability to sustain operations Monday through Friday from 8 a.m. to 5 p.m. Agencies would need to conduct a thorough review of statutes and administrative rules to determine what challenges may exist under any reduced hours strategy.

---

<sup>2</sup> The term “furlough” is used differently in the FLSA regulations than in the civil service rules. While the rules define a furlough as a temporary cessation of an employee's service, a “furlough” under FLSA would likely include the temporary, reduction in hours scenarios discussed here.

## **WORKLOAD IMPLICATIONS**

Under any temporary reduction in hours scenario, agencies must evaluate how, and if, programs and services can be delivered with fewer work hours available to staff. Program performance measures and deliverables will need to be evaluated and likely adjusted to reflect the decreased staffing level.

## **ISSUES REQUIRING ADDITIONAL DISCUSSION**

**Turnover:** Temporarily reducing employees' hours has the potential to increase employee turnover. How quickly turnover will happen and to what degree it will occur depends on the particulars of the temporary reduction strategy and the state of the overall economy. Agencies must consider how they will forecast/anticipate any increase, what steps should be taken to mitigate the potential loss of experienced and skilled staff, and how the overall cost of the turnover will be measured.

### **Considerations related to collective bargaining agreements:**

- Since the term "temporary" is not defined in the agreements, what length of time will the unions view as temporary?
- If legislation was enacted to direct agencies to reduce the hours of employees, could the legislation potentially serve as an impairment of a contractual relationship?

### **Considerations related to the cost of Implementation:**

- Will the employee be eligible to apply for unemployment, and if so what is the offset to the savings generated by the temporary reduction in hours or layoff?
- How will the temporary layoff or reduction in hours increase the workload of your human resources staff? For example, requiring employees to submit leave without pay every week will require leave entry for every affected employee. Reducing the hours of an overtime exempt employee results in the employee being considered overtime eligible which would increase the number of employees submitting time sheets.

### **Considerations related to the return to full-time:**

- What is the plan to end the temporary reduction? How will employees be returned to full-time work? Change management will be as important to concluding the temporary reduction as it is for the initiating of the reduction.

## **Agency contacts**

Sandi Stewart  
Assistant Director  
Legal Affairs Division  
Department of Personnel  
(360) 664-6324  
sandis@dop.wa.gov

Steve Norsen  
Manager  
HCA/PEBB Outreach  
and Training  
Health Care Authority  
(360) 412-4201  
Steve.norsen@hca.wa.gov

Diane Leigh  
Director  
Labor Relations Office  
Office of Financial  
Management  
(360) 725-5167  
Diane.Leigh@ofm.wa.gov

Michelle Hardesty  
Assistant Director  
Retirement Services Division  
Department of Retirement  
Systems  
(360) 664-7193  
MichelleH@drs.wa.gov